

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 06, 2025

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PATRICK K. WILLIS COMPANY, INC.,
a California corporation,
Plaintiff,
v.
PRIME INSURANCE COMPANY, an
Illinois corporation,
Defendant.

No. 2:21-CV-000298-SAB

**ORDER DENYING MOTIONS
FOR SUMMARY JUDGMENT**

Before the Court are Defendant's Motion for Partial Summary Judgment, ECF No. 61, and Plaintiff's Motion for Summary Judgment, ECF No. 64. A hearing on the motion was held on April 18, 2025, by videoconference. Plaintiff was represented by Charles Hausberg and Michael Maurer. Defendant was represented by Eliot Harris, Miranda Russell, and Linda Clapham.

Defendant Prime Insurance Company ("Prime") asks the Court to dismiss Plaintiff Patrick Willis Company, Inc.'s ("PK Willis") extra-contractual claims for (1) Common law bad faith; (2) Breach of the Washington Consumer Protection Act (the "CPA"); (3) Negligence; (4) Coverage by estoppel; (5) Breach of the Washington Insurance Fair Conduct Act ("IFCA"); and (6) *Olympic Steamship* legal fees and costs. It asserts it reasonably investigated and handled claims made against PK Willis and Auto Trackers, including defending both Auto Trackers and

1 PK Willis with a defense under a reservation of rights.

2 Plaintiff PK Willis argues the undisputed facts in this case demonstrate that
3 Defendant Prime refused to use good faith efforts to settle a lawsuit against PK
4 Willis and Auto Trackers and Recovery North LLC. It asserts Prime did not
5 attempt to effectuate a prompt, fair, or equitable settlement when its insureds'
6 liability had become reasonably clear.

7 **Motion Standard**

8 Summary judgment is appropriate “if the movant shows that there is no
9 genuine dispute as to any material fact and the movant is entitled to judgment as a
10 matter of law.” Fed. R. Civ. P. 56(a). There is no genuine issue for trial unless
11 there is sufficient evidence favoring the non-moving party for a jury to return a
12 verdict in that party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250
13 (1986). The moving party has the initial burden of showing the absence of a
14 genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).
15 If the moving party meets its initial burden, the non-moving party must go beyond
16 the pleadings and “set forth specific facts showing that there is a genuine issue for
17 trial.” *Anderson*, 477 U.S. at 248.

18 In addition to showing there are no questions of material fact, the moving
19 party must also show it is entitled to judgment as a matter of law. *Smith v. Univ. of*
20 *Wash. Law Sch.*, 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party is entitled
21 to judgment as a matter of law when the non-moving party fails to make a
22 sufficient showing on an essential element of a claim on which the non-moving
23 party has the burden of proof. *Celotex*, 477 U.S. at 323. The non-moving party
24 cannot rely on conclusory allegations alone to create an issue of material fact.
25 *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993). When considering a
26 motion for summary judgment, a court may neither weigh the evidence nor assess
27 credibility; instead, “the evidence of the non-movant is to be believed, and all
28 justifiable inferences are to be drawn in his favor.” *Anderson*, 477 U.S. at 255.

1 In considering cross motions for summary judgment, the court views the
2 evidence for each of the motions “in the light most favorable to the nonmoving
3 party” for that motion and determines “whether there are any genuine issues of
4 material fact and whether the district court correctly applied the relevant
5 substantive law.” *Wallis v. Princess Cruises, Inc.*, 306 F.3d 827, 832 (9th Cir.
6 2002).

7 **Background Facts**

8 PK Willis offers, among other things, nationwide asset recovery services to
9 lenders. As part of these services, PK Willis contracts with different local
10 companies around the country to effectuate car repossessions. One such local
11 company that PK Willis contracts with is Auto Trackers and Recovery North LLC.

12 In April 2019, PK Willis was hired by Santander Consumer USA Inc.
13 (“Santander”) to repossess a vehicle that was purchased/leased by Lucas Chaney
14 and his family.¹ In turn, PK Willis hired Auto Trackers to effectuate the
15 repossession. On April 29, 2019, Auto Trackers attempted to repossess the car. Its
16 tow truck driver got into an altercation with the Chaney family outside their house. The
17 vehicle was ultimately repossessed, after the police arrived.

18 On August 9, 2019, the Chaney family filed an underlying lawsuit in the Eastern
19 District of Washington against PK Willis and Auto Trackers, asserting claims for
20 violations of the Fair Debt Collection Practices Act; violations of the Washington
21 Consumer Protection Act; violations of the Uniform Commercial Code; assault and
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24 ¹ The Chaney family purchased a vehicle from a dealership in Spokane, Washington. Mr.
25 Chaney and the dealership executed a written agreement that granted the dealership
26 a security interest in the vehicle and provided for installment payments on the
27 financed amount. The dealership assigned this contract, including the security
28 interest, to Santander.

1 battery; and false imprisonment.² They alleged Auto Trackers and its employee,
2 Mr. Grass, committed a series of offenses during the course of attempting to
3 repossess the Chaney vehicle, including blocking the Chaney's vehicle from
4 leaving the drive, slamming the car door on their daughter's leg and knocking Mr.
5 Chaney to the ground. PK Willis was alleged to be at fault based upon a theory of
6 vicarious liability. Santander was also named in that action, which triggered
7 defense and indemnity obligations by PK Willis, based on the contract it had with
8 Santander.³

9 Auto Trackers tendered the claims to Prime. In response to the tender of the
10 claims, Prime agreed to defend Auto Trackers and its employees under a
11 reservation of rights. Prime agreed to defend PK Willis but refused to defend
12 Santander. As a result, PK Willis defended Santander on its own, at its own
13 expense.

14 On September 13, 2019, Prime issued reservation of rights letters to Auto
15 Trackers and PK Willis, agreeing to defend Auto Trackers, as Prime's named
16 insured, and PK Willis, as an additional insured under the Policy while its
17 investigation continued. In the letter, Prime reserved its right to deny coverage
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19 ² 2:19-CV-272-SAB, *Chaney v. Auto Trackers, et al.*

20 ³ PK Willis and Santander asserted a cross-claim against Auto Trackers, seeking a
21 declaration that Auto Trackers was required to provide for their defense and
22 indemnification pursuant to a Master Services Agreement between PK Willis and
23 Auto Trackers, and that Auto Trackers breached the MSA by failing to defend PK
24 Willis and Santander. They alleged Auto Trackers owed contractual defense and
25 indemnity obligations to PK Willis based upon its services agreement. PK Willis,
26 in turn, owed defense and indemnity payment to Santander. As a result, both PK
27 Willis and Auto Trackers had contractual obligations potentially owed to
28 Santander.

1 based on the Policy's exclusions for (1) bodily injury or property damage; (2)
2 claims arising out of assault and battery; and (3) statutory penalties, multiplied
3 damages, or non-monetary relief.

4 On June 22, 2020, Prime issued supplemental Reservation of Rights to Auto
5 Trackers and PK Willis. In July 2020, Prime also wrote to Auto Trackers advising
6 of its coverage position regarding PK Willis's and Santander's cross-claim against
7 Auto Trackers. It maintained its position that it would not defend Santander.

8 On August 27, 2020, counsel for Auto Trackers emailed Prime,
9 recommending offering up to \$45,000 to resolve the Chaney's claims. On
10 September 2, 2020, counsel for PK Willis provided an evaluation of the Chaney's
11 claims. They believed the Chaney's claims damages were minimal but were unable
12 to recommend any settlement authority due to lack of information.

13 On September 3, 2020, the Chaney's issued a written demand for \$500,000.
14 On that same day, Prime met with Auto Tracker's defense counsel and relayed that
15 it believed there was very little exposure for the claims because the majority of the
16 value was for the breach of peace claim, which is not covered. On September 9,
17 2020, Prime discussed the matter with counsel for PK Willis, again stating that it
18 believed the claims were for the breach of peace. PK Willis' counsel had not done
19 any work on the case but also questioned why the Chaney's demand was so high.

20 On November 19, 2020, the first mediation occurred in the underlying
21 action. The claims did not resolve at that time, in part, due to the fact that there was
22 a pending Motion for Summary Judgment filed by PK Willis.⁴ Additionally, the
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24 ⁴ On June 10, 2021, the Court ruled on the PK Willis' Motions for Summary
25 Judgment. It held that under the plain language of the contract Defendant Auto
26 Trackers had a duty to defend Defendant PK Willis and its clients against any
27 claims arising from or relating to Defendant Auto Trackers. It found Defendant
28 Auto Trackers breached this duty by failing to tender a defense for Defendant

1 Chaney asserted for the first time that Mr. Chaney had surgery on his hip in
2 September 2020, which costed around \$61,000. Prime had extended an offer of
3 \$10,000.00 as contribution towards any global settlement.

4 Settlement negotiations continued. On June 23, 2021, counsel for Auto
5 Trackers wrote to Prime, recommending settling the Chaney's claims for up to
6 \$95,000.

7 On July 26, 2021, counsel for Auto Trackers wrote to Prime to address the
8 coverage issues and contest Prime's position. The letter stated why coverage
9 existed as to number of the allegations that were raised. This included the revised
10 injury claims and potential contribution claims from PK Willis and Santander. In
11 the response to the letter from Auto Trackers' Counsel, Prime again stated in its
12 August 13, 2021, letter that most of the damages were not covered.

13 On August 4, 2021, counsel for PK Willis issued a recommendation to
14 Prime. In that recommendation, counsel addressed the recent court rulings and
15 requested \$300,000 on authority to settle the claims against PK Willis. Counsel
16 believed \$300,000 was a reasonable amount for a global settlement. Auto
17 Trackers' counsel also provided their evaluation to Prime that there was at least a
18 \$110,000 exposure on the underlying case. Counsel subsequently increased this
19 recommendation to \$200,000.

20 On August 13, 2021, Prime indicated it believed PK Willis and Auto
21 Trackers would need to make significant contributions towards settlement.
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25 Santander. The Court then found genuine issues of material fact exist regarding
26 whether PK Willis should be held vicariously liable for the actions of Defendant
27 Auto Trackers. Finally, the Court found, as a matter of law, breaching the peace
28 while repossessing a vehicle is an unfair practice that affects the public interest.

1 A second mediation was held on August 20, 2021.⁵ At this mediation, Prime
2 offered \$20,000 to settle the claims. The parties did not settle.

3 On August 23, 2021, the Chaneys' counsel presented a demand letter for
4 requesting \$275,000 to settle. In response to this demand, counsel for PK Willis
5 and Santander wrote to Prime on August 23, 2021, and again on August 31, 2021,
6 requesting that Prime undertake efforts to settle the claim for the \$275,000
7 demand. Prime stated it would not agree to fund any such settlement.

8 On September 7, 2021, PK Willis agreed to settle for the reduced amount of
9 \$273,000. Later that day, Prime offered \$40,000 to settle the matter, (including
10 cross-claims and any insurance bad faith-related claims) if PK Willis and/or Auto
11 Trackers were to match that amount. PK Willis paid the entire settlement amount.

12 Legal Framework

13 A. Insurer's Duty of Good Faith

14 A duty of good faith of an insurer requires fair dealing and equal
15 consideration for the insured's interest. *Tank v. State Farm Fire & Cas. Co.*, 105
16 Wash.2d 381, 387 (1986). An insurer's duty to act in good faith is separate from
17 their contractual coverage obligations to their insureds. *Safeco Ins. Co. v. Butler*,
18 118 Wash.2d 383, 393 (1992). A violation of this duty may give rise to a tort
19 action for bad faith. *Smith v. Safeco Ins. Co.*, 150 Wash.2d 478, 484 (2003).

20 Under a reservation of rights, an insurance company has an enhanced
21 obligation to its insured as part of its duty of good faith. *Id.* Under this enhanced
22 obligation, the insurer must meet specific criteria: (1) it must thoroughly
23 investigate the cause of the insured's accident and nature and severity of the
24 injuries; (2) it must retain competent counsel for the insured; (3) it must fully

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26 ⁵ On July 26, 2021, Prime filed a Declaratory Judgment Action against Auto
27 Trackers and PK Willis in Utah. This case was ultimately dismissed on the basis of
28 this Court being the proper forum to decide the coverage dispute.

1 inform the insured not only of the reservation of rights defense, but of all
2 developments relevant to the policy coverage and progress of the lawsuit,
3 including disclosure of all settlement offers made by the insurer; and (5) it must
4 refrain from engaging in any action that would demonstrate a greater concern for
5 the insurer's monetary interest than for the insured's financial risk. *Id.*

6 An insurer owes its insured an affirmative duty to undertake a good faith
7 effort to settle when an insured's liability is likely. *Moratti ex. Rel. Tarutis v.*
8 *Farmers Ins. Co. of Wash.*, 162 Wash. App. 495, 502 (2011).

9 To succeed on a bad faith claim, a policyholder must show the insurer's
10 breach of the insurance contract was unreasonable, frivolous, or unfounded. *Smith*,
11 150 Wash.2d at 484. Whether an insurer acted in bad faith is a question of fact. *Id.*
12 An insurer is entitled to dismissal on summary judgment on a bad faith claim "only
13 if there are no disputed material facts pertaining to the reasonableness of the
14 insurer's conduct under the circumstances, or the insurance company is entitled to
15 prevail as a matter of law on the fact or the insurance company is entitled to prevail
16 as a matter of law on the facts construed most favorably to the nonmoving party."
17 *Id.*

18 **B. Washington Insurance Regulations**

19 Wash. Admin. Code § 284–30 covers unfair claims settlement and trade
20 practices by insurance companies. *Coventry Assocs.*, 136 Wash.2d at 276. The
21 purpose of WAC § 284–30 is, in part, to "define certain minimum standards which,
22 if violated with such frequency as to indicate a general business practice, will be
23 deemed to constitute unfair claims settlement practices." WAC § 284–30–300. The
24 unfair practices listed in WAC § 284–30 include misrepresenting pertinent facts
25 and refusing to pay without a reasonable investigation (WAC § 284–30–330),
26 failure to disclose all relevant policy provisions (WAC § 284–30–350), and failure
27 to state the specific grounds for denial of a claim (WAC § 284–30–380).

28 A violation of the insurance regulations (any subsection of WAC § 284-30-

330) is a violation of the Consumer Protection Act. *Schiff v. Liberty Mutual Fire Ins. Co.*, 2 Wash.3d 762, 771 (2024); *see also Indus. Indem. Co. of the N.W. v. Kallevig*, 114 Wash.2d 907, 922 (1990) (holding a single violation of WAC § 284-30-330 is sufficient to support a CPA violation).

C. Washington Insurance Fair Conduct Act

The Washington Insurance Fair Conduct Act (“IFCA”) protects insureds against unfair practices by insurance companies. Wash. Rev. Code § 48.30.015. IFCA authorizes a cause of action to a first-party insured against an insurer who “unreasonably denie[s] a claim for coverage or payment of benefits. § 48.30.015(1).

Analysis

Here, there are genuine issues of material fact as to whether Prime acted in bad faith or whether it acted reasonably in its investigation and handling of the claims, including its settlement positions and offers. There are genuine issues of material fact as to whether Prime violated the applicable regulations. Also, there are genuine issues of material fact as to whether Prime unreasonably denied coverage or benefits. As such, summary judgment is not appropriate, and it will be up to the jury to decide whether Prime acted reasonably and in good faith or whether it violated the Washington insurance regulations and statute.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant's Motion for Partial Summary Judgment, ECF No. 61, is
3 **DENIED.**

4 2. Plaintiff's Motion for Summary Judgment, ECF No. 64, is **DENIED.**
5 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order
6 and forward copies to counsel.

7 **DATED** this 6th day of May 2025.



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13 Stanley A. Bastian
14 Chief United States District Judge
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